

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARCO L. DUNCAN,

Plaintiff,

vs.

OUTPUT SALES CORPORATION,

Defendant.

Civil Action No. 2:21-cv-716

Judge: Fischer

**EXEMPT FROM COURT COSTS  
AND FILING FEES UNDER  
38 U.S.C. § 4323(h)(1)**

**COMPLAINT**

1. This action arises under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335, as amended ("USERRA").

**I. Parties**

2. Lance Corporal Marco L. Duncan is an adult person who resides in the Western District of Pennsylvania.

3. Defendant Output Sales Corporation ("OSC") is a Pennsylvania corporation with offices at 119 Hunt Valley Road, New Kensington, Pennsylvania 15068.

**II. Jurisdiction and Venue**

4. This Court has subject matter jurisdiction pursuant to 38 U.S.C. § 4323(b)(3) and 28 U.S.C. § 1367.

5. The United States District Court for the Western District of Pennsylvania is an appropriate venue under 38 U.S.C. § 4323(c)(2) because OSC maintains a place of business in this District.

### **III. Facts**

6. Lance Corporal Duncan serves in the United States Marine Corps Reserves. His DoD Identification Number is 1539555576.

7. Marine Corps Reservists are trained in combat and can be mobilized for active duty in times of war, national emergency or for humanitarian efforts. Reserve Marines are critical to the Nation's ability to put soldiers where they need to be to fight and win its battles at home and abroad.

8. Reserve Marines go through the same intense training and work in the same Military Occupational Specialties (MOS) as their active-duty counterparts. With the ability to train part time with a Marine Corps Reserve unit near their homes or schools, Reserve Marines can continue to pursue a full-time civilian career or an education.

9. After successful completion of Marine Corps Recruit Training and becoming proficient in their MOS, Reserve Marines begin their duties. From that point forward, training periods are called drills, which usually occur one weekend every month and two weeks each summer (full-drill status).

10. In May, 2021, Lance Corporal Duncan applied for an inside sales position with OSC.

11. OSC refused to hire Lance Corporal Duncan because of his status as a reservist in the Marines.

12. OSC's refusal to hire Lance Corporal Duncan because of his status as a Reserve Marine violated USERRA.

13. The Pennsylvania Military Affairs Act (“PMAA”) expresses the clear and specific Pennsylvania public policy against employment discrimination because of membership in the Reserves:

(a) General rule. - It is unlawful . . . for any private employer to refuse to hire or employ any individual not on extended active duty because of his membership in the National Guard or any one of the other reserve components of the armed forces of the United States, . . . , or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment because of such membership, . . . .

51 Pa. C.S.A. § 7309(a) (emphasis added).

14. "Maintaining the readiness and efficiency of our National Guard and ensuring the job security of its members is an important public policy canonized in [Pennsylvania] statutory and constitutional provisions.” *Tukesbrey v. Midwest Transit, Inc.*, 822 F. Supp. 1192, 1201 (W. D. Pa. 1993) citing 51 Pa. C.S.A. § 1101 *et seq.* and § 7301 *et seq.*

15. OSC’s refusal to Lance Corporal Duncan was wrongful under Pennsylvania law because it violated the Pennsylvania public policy embodied in the PMAA. *See, Hamovitz v. Santa Barbara Applied Research, Inc.*, No. 2: 07-cv-0454, 2010 U.S. Dist. LEXIS 110937, at \*19 (W.D. Pa. Oct. 19, 2010) (finding that refusal to hire service member in violation of PMAA gives rise to common law tort claim with full tort remedies including compensatory and punitive damages).

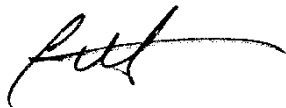
16. OSC’s refusal to hire Lance Corporal Duncan because of his military service obligations was reckless and/or malicious.

17. As the direct and proximate result of OSC’s unlawful refusal to hire him, Lance Corporal Duncan has sustained damages.

WHEREFORE, Lance Corporal Duncan demands a jury trial and judgment in his favor for:

- a. Back pay and benefits,
- b. Instatement or front pay and benefits,
- c. Pre- and post-judgment interest,
- d. Liquidated damages,
- e. Compensatory damages,
- f. Punitive damages,
- g. Attorney fees and costs of suit, and,
- h. Such other legal and equitable relief as the Court finds just and proper.

Respectfully submitted,



---

Charles A. Lamberton, Esq.  
Pa. I.D. No. 78043  
[cal@brackenlamberton.com](mailto:cal@brackenlamberton.com)  
Robert A. Bracken, Esq.  
Pa. I.D. No. 206095  
[rab@brackenlamberton.com](mailto:rab@brackenlamberton.com)  
Bracken Lamberton, LLC  
707 Grant Street  
Gulf Tower, Suite 1705  
Pittsburgh, PA 15219  
412-258-2250  
[www.brackenlamberton.com](http://www.brackenlamberton.com)